



## ADMINISTRATIVE DIRECTIVE

<b>DEFENSE AND INDEMNIFICATION OF CITY EMPLOYEES IN LITIGATION</b>	NUMBER <b>2.02-23</b>	PAGE <b>1 of 3</b>
	EFFECTIVE DATE <b>November 8, 2010</b>	

### **I. PURPOSE**

This directive establishes City policy regarding the defense and indemnification of City employees who are named in civil litigation along with the City of Tucson or in certain criminal litigation when the civil or criminal litigation arises out of the performance by the employee of employee's official duties on behalf of the City of Tucson.

### **II. POLICY**

- A.** It is the policy of the City of Tucson to defend officers or employees of the City named in civil litigation and to hold harmless and indemnify any officer or employee of the City from and against any and all claims of civil liability for alleged acts, errors, or omissions of any nature while said employee is acting on behalf of the City of Tucson in that employee's authorized governmental or proprietary capacity and in the course and scope of the employee's employment or authorization of the City. For purposes of this administrative directive, officers or employees of the City include any officer, employee or agent of the City, and any authorized volunteer working under the direction of an officer, employee or agent of the City, any duly appointed member of boards, committees, or commissions of the City, and the spouse of any of the foregoing, where claims are made on the spouse for incidents arising solely out of the actions of the named officer or employee. Civil litigation includes, without limitation, administrative proceedings brought by any licensing or regulatory authority relating to any technical or professional activity within the scope of employment including any proceeding affecting a license possessed by any officer or employee that is necessary for the performance of official City duties by the officer or employee.
- B.** The following exclusions apply to the indemnification and other benefits provided in subsection (A):
- 1.** Claims or losses that arise out of or are directly attributable to any act or omission determined by a court of competent jurisdiction to be a felony by the officer or employee; or
  - 2.** Claims or losses that arise out of or are directly attributable to any at or omission constituting tortious behavior outside of the scope and course of the employee's employment with the City; or
  - 3.** Actions brought against a City employee, whether criminal or civil, arising out of conduct unrelated to the employee's employment with the City of Tucson. The conduct of City employees in such cases is governed by Administrative Directive 2.02-14, Ethics and Conflicts of Interest.



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### **III. COOPERATION WITH CITY DEFENSE**

In order to receive the benefits of defense and indemnification pursuant to Paragraph II(A) above, any City employee claiming such indemnification shall perform the following:

1. In the event of an occurrence which may reasonably be expected to give rise to civil liability or a claim of liability on the part of the City, written notice detailing the particulars of the occurrence shall be provided by the employee or employees responsible to the Internal Litigation Unit of the City Attorney's Office, with a copy to the City's Risk Management Division, on a form provided by the Risk Manager. The notice shall contain the identity of the employee or employees claiming indemnification, and all reasonably, obtainable information with respect to time, place and circumstances of the occurrence. It shall include, if available, the name, address and telephone number of any person who may claim injury; the names, addresses and telephone numbers of all potential witnesses; and the name, badge number, and case number, if applicable, of any investigating law enforcement officer or agency. Such communication shall be deemed confidential, within the purview of the attorney/client privilege. Such written notification shall be provided as soon as possible after the potential incident giving rise to liability, but in no event later than three working days following the incident. In addition to written notification, any occurrence involving death or serious bodily injury to a third party shall be reported immediately by telephone to the Risk Manager during City business hours.
2. If notice of claim or suit is filed against an employee or other party claiming indemnity hereunder, that person shall immediately forward to the Internal Litigation Unit of the City Attorney's Office every demand, notice, summons or other process received by that person or by that person's representative. The employee shall also inform their respective department head of such service.
3. Employees or other officials seeking indemnity shall cooperate with the City Attorney, and upon the City's request, assist in participating in settlement conferences, in the conduct of lawsuits, and the enforcement of any right of defense, contribution or indemnity which may be owing to said officer or employee by any third person or organization. The officer or employee claiming indemnity shall not make any written or oral statements or agreements before or after an occurrence that would tend to prejudice the employee's or the City's right to defense, contribution or indemnification by a third person or organization, or which would prejudice the City's right to subrogation to any such rights.
4. The officer or other employee claiming indemnity shall attend any necessary meetings, hearings, or trials, and shall assist the City Attorney in the securing and providing of evidence and obtaining the attendance of witnesses. The officer or employee shall not voluntarily make any payment, assume any obligation, or incur any expense related to the defense of the matter, without prior authorization of the City Attorney.



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### IV. CITY'S DEFENSE OF LITIGATION

- A. In civil litigation where the City of Tucson is named as a Defendant along with its officers or employees, in which there is no question that the employee's actions that are alleged to give rise to liability occurred within the course and scope of City employment, the City Attorney, or outside counsel designated by the City Attorney will jointly represent both the City and the named employees at the City's expense to the extent permitted by Arizona law and Supreme Court ethical rules.
- B. In civil cases where the City Attorney determines that the City's interest may conflict with the employee's interest, and when such conflict is not waived or waivable, the City will provide separate counsel to represent the employee or employees, at the City's expense.
- C. Any City officer or employee has the right to retain civil or criminal defense counsel of the officer's or employee's choosing at the sole cost and expense of the officer or employee.

### V. LIMITATION OF LIABILITY

- A. Nothing in this Administrative Directive shall be construed to impose any liability upon the City or departments, agencies, boards, or commissions, or upon any City officers, agents or employees.
- B. Nothing in this Administrative Directive shall be construed to impair any defense that the City, or its departments, agencies, boards, commissions, officers, agents, or employees may have available at law.

**Appendices**                      None

**References**                      None

**Review Responsibility and Frequency**      The City Attorney shall review this directive annually, or as needed

**Authorized**

  
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City Manager                      11-29-10  
Date